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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/955,395 | 09/18/2001 | Younger Ahluwalia | A34355-070015.0181 | 1196 |

7590 01/21/2004
BAKER BOTTS, L.L.P.
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30 ROCKEFELLER PLAZA
NEW YORK, NY 10112-0228

EXAMINER

RUDDOCK, ULA CORINNA

| ART UNIT | PAPER NUMBER |
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1771

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/955,395

Applicant(s)

AHLUWALIA, YOUNGER

Examiner

Ula C Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 09 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 14-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The Examiner has carefully considered Applicant's response filed October 9, 2003.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

3. Applicant's election of Group I is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 103

4. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia (US 5,965,257) in view of GB 2167060 (GB '070) or Dugan et al. (US 4,994,317) or Dombeck (US 6,228,497). Ahluwalia disclose a structural article comprising a substrate having an ionic charge which is coated with a coating having essentially the same ionic charge. The coating consists of a filler material and a binder material. The substrate is preferably fiberglass and the filler is selected from flay ash, charged calcium carbonate, and ceramic microspheres. The binder is preferably acrylic latex (abstract). The articles are planar in shape and the substrate is coated on one side or both sides depending on the intended application (col 3, ln 42-44). The structural material may be coated with a water repellent material, an algacide, an antifungal material, an antibacterial material, a surface friction agent, a flame retardant material, and a coloring dye (col 3, ln 54-67 to col 4, ln 1-3). Ahluwalia disclose the claimed invention except for the teaching that the filler

material also includes clay and that the material comprises 65-90% glass fibers, 20-80% clay filler, and from 80-20% weight of acrylic latex binder material.

GB 2167060 discloses a fire resistant material comprising glass wool fibers and one or more selected clays (abstract). The clays are selected to provide an endothermic reaction in the fire resistant material (page 2, ln 5-11). Dugan et al. (**US 4,994,317**) disclose a fabric suitable for use as a flame barrier fabric comprising a flame durable textile fabric (abstract). The fabric comprises inorganic yarns such as glass (col 2, ln 37). To provide enhanced resistant to flame and heat, hydrated clay may be incorporated in a silicone layer (col 3, ln 58-61). Dombeck (**US 6,228,497**) disclose a high temperature resistant glass fiber composition comprising glass fibers and a latex binder (abstract). Clay fillers are frequently added to inorganic fiber products to improve their fire resistance (col 1, ln 19-21 and col 5, ln 4-7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the clay filler of either GB 2167060 or Dugan et al. or Dombeck in the structural article of Ahluwalia, motivated by the desire to increase the flame and heat resistance of the article.

Furthermore, it should be noted that optimizing the amounts of glass fibers, clay filler, and binder material in the composition are result effective variables. For example, the amount of clay filler directly affects the flame resistance of the composition. The amount of binder material directly affects the strength of the composition. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used a material comprising 65-90% glass fibers, 20-80% clay filler, and from 80-20% weight of acrylic latex binder material, since

it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized these amounts motivated by the desire to obtain an article with increased strength and flame resistance.

Rejection is maintained.

Response to Arguments

5. Applicant's arguments filed October 9, 2003, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that Ahluwalia teaches a structural article, whereas the present invention discloses a fabric material useful for imparting fire resistance to clothing and furniture. This argument is not commensurate in scope with the claims, because the claims as presently written, only require a fire resistant fabric. The claims do not require a fabric material useful for imparting fire resistance to clothing and furniture. Furthermore, it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed apparatus from a prior art product satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Applicant further argues that GB 2167060 (GB '060), Dombeck, and Dugan et al. do not provide the skilled artisan with any motivation that clay should be combined with a binder to make a charged coating. This argument is not persuasive, because as shown above, these references were used for their disclosure of a fire resistant material comprising clay. Furthermore, only the Ahluwalia reference was used for its teaching of a charged coating. Applicant also argues that neither GB '060, nor Dombeck, nor Dugan et al. teach the addition of clay to impart flexibility to the material. This argument is not

commensurate in scope with the claims, because the claims do not require that the fabric be neither flexible nor drapable. Furthermore, it appears as though Applicant is arguing that the Examiner's reason to combine the references is not the same as Applicant's. It is the Examiner's position that if it is obvious to combine references for one reason, it is obvious to combine references for all reasons. *In re Graf*, 145 USPQ 197 (CCPA 1965); *In re Finsterwalder*, 168 USPQ 530 (USPQ1970). Applicant also argues that it is not seen how the recited amounts of clay filler would be considered a result effective variable for the production of a fabric material with increased strength and flame resistance. This argument is not persuasive because GB '060, Dombeck, and Dugan et al. all disclose that adding clay to a substrate increases its flame resistance, thus providing motivation for altering the amount of clay filler.

Conclusion

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Application/Control Number: 09/955,395
Art Unit: 1771

Page 6

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 703-305-0066. The examiner can normally be reached on Monday-Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

UCR

UCR

Ula Ruddock
Ula C. Ruddock
Primary Examiner
Tech Center 1700